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UNITED STATES OF AMERICA

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VIA ELECTRONIC FILING

Dr. Jeffery Morris
Acting Director, Office of Pollution Prevention and Toxics (7407M)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460-0001

RE: Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act (82 Fed. Reg. 4,825) (January 17, 2017); Docket Nos. EPA-HQ-OPPT-2016-0636; FRL-9957-74; RIN: 2070-AK23

Dear Dr. Morris:

The U.S. Chamber of Commerce (“Chamber”), the world’s largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America’s free enterprise system, offers these comments to the U.S. Environmental Protection Agency (“EPA”) on EPA’s proposed “Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act” (“the proposed rule”).¹ The Chamber provides these comments to assist EPA in its development of a new chemical evaluation and management program that is effective and based off of high-quality and sound science.

I. Background

The Chamber has long supported a high-quality and science-based chemical management and evaluation program. After close to a decade of reform efforts, President Obama signed the Frank R. Lautenberg Chemical Safety for the 21st Century Act² (“LCSA”) into law on June 22, 2016, amending the Toxic Substances Control Act³ (“TSCA”) for the first time since it was enacted in 1976.

¹ 82 Fed. Reg. 4,825 (Jan. 17, 2017).

² Pub. L. No. 114-182, 130 Stat. 448 (June 22, 2016).

³ 15 U.S.C. § 2601 et seq. (1976). Hereinafter, all references to TSCA include the LCSA amendments.

Prioritization is the first step in the new process for reviewing and managing existing chemical substances. It sets the stage for a new chemical management and evaluation program and allows EPA to recognize which substances have the greatest hazard and exposure potential so that they may go through the risk evaluation process first.

On January 17, 2017, EPA published the proposed rule in the *Federal Register*.⁴ The proposed rule suggests a 4-step process to identify chemical substances as either “high priority” or “low priority:” 1) pre-prioritization; 2) initiation; 3) proposed designation; and 4) final designation.⁵ High priority substances are those that EPA considers to have the greatest hazard and exposure potential and will undergo further risk evaluation.⁶ Conversely, low priority substances will not require risk evaluations at that time.⁷

The Chamber submits these comments to aid EPA in its development of a transparent and balanced prioritization process that is grounded in high-quality science. EPA should provide more detail regarding the pre-prioritization phase. Moreover, EPA should reconsider its treatment of low priority chemicals, as the bar is set extremely high for designating chemicals as low priority. These chemicals should not be written out of the prioritization process, nor are they something that EPA should ignore after the first 20 are identified. These issues, as well as others that the Chamber has identified, are further explained below.

It is important to note that in developing the prioritization process, EPA should understand that a sound prioritization process is pivotal to not only developing a comprehensive risk evaluation process, but also the success of TSCA as a whole. Likewise, EPA should acknowledge that while a successful risk evaluation process rests on the development of a successful prioritization process, the two processes are separate provisions and should be treated as such for purposes of public comment.

II. EPA Must Provide Further Clarity Regarding the Pre-Prioritization Phase

The Chamber believes that EPA should clarify certain aspects of the proposed rule regarding the pre-prioritization phase and consider incorporating this phase into a more formal process. EPA has been given “broad discretion” to choose which chemicals enter the prioritization process.⁸ The proposed rule, however, provides very little detail as to how EPA will select the candidates during the pre-prioritization phase. EPA should provide affected stakeholders with more information on the pre-prioritization phase and give them an opportunity to comment on the selection criteria used to develop the pool of candidates for the pre-prioritization phase.

⁴ See *supra* note 1.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ 82 Fed. Reg. at 4,830.

Moreover, LCSA does not mention a pre-prioritization phase. While the statute is silent, the proposed rule suggests that this is the first step in the prioritization process, although it could also be construed that this stage is outside the prioritization process. Additionally, the proposed rule does not mention how the pre-prioritization stage will be carried out. This information is vital to a complete understanding of the risk evaluation process. EPA should consider providing further explanation or a supplemental opportunity for public comment in order to make sure that this step is in line with both the statute and congressional intent.

III. EPA Must Treat High Priority and Low Priority Chemicals Equally

It is imperative that EPA give high priority and low priority chemicals the same treatment. Under the law, EPA must designate chemicals, as a whole, as either high priority or low priority based on the chemical's hazard and exposure potential under its conditions of use.⁹ To that extent, EPA can designate a chemical as high priority based on only one condition of use, but can only make a low priority designation based on *all* conditions of use. That is to say, a chemical can only be designated as low priority if it does not meet the "may present an unreasonable risk" high priority standard under *all* conditions of use.¹⁰

That makes it extremely difficult to designate a chemical as low priority. It would be in EPA's best interest to adjust that proposal so that EPA is just as likely to designate a chemical as high priority as it is to designate one as low priority. Specifically, as discussed in the Chamber's comments on EPA's proposed risk evaluation rule,¹¹ EPA should take a tiered approach to the term "conditions of use." This would allow EPA to make low priority designations based on the likelihood that only certain condition(s) of use of a chemical have a low potential for risk, rather than the lofty standard of "all." This would benefit EPA as well, considering it would be able to conserve its resources and focus on fewer and less cumbersome high priority designations.

IV. EPA Must Provide Additional Clarity on How It Plans to Apply the Section 26 Standards to the Prioritization Process

Section 26 of TSCA provides for certain scientific standards that EPA must adhere to during the risk evaluation process, including when it determines if a chemical is a high or low priority substance. Specifically, EPA requires that these scientific designs are based on the best available science¹² and the weight of the scientific evidence.¹³ EPA should provide an explanation as to how it plans to apply these standards to the prioritization process, especially considering the fact that low priority designations may be reviewed in court.

⁹ See 15 U.S.C. § 2605(b)(1); 82 Fed. Reg. at 4,825.

¹⁰ See 15 U.S.C. § 2605(b)(1); 82 Fed. Reg. at 4,830.

¹¹ Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act, 82 Fed. Reg. 7,562 (Jan. 19, 2017).

¹² 15 U.S.C. § 2625(h).

¹³ 15 U.S.C. § 2625(i).

TSCA requires that those standards apply to multiple provisions of the law, each with its own exclusive set of requirements. It is important that EPA apply these standards to prioritization decisions and make the basis of its decisions available to the public. Moreover, EPA should ensure that when making science-based decisions, it applies those standards in a way that is unique to the prioritization phase, rather than the risk evaluation phase.

V. Conclusion

The Chamber appreciates the opportunity to comment on this important matter. It is imperative that EPA develop an efficient, high-quality, and science-based chemical management and review program in accordance with the new TSCA, and ensure that the proposed rule is developed correctly and is a step in the right direction.

If you have questions regarding these comments, please contact me at wkovacs@uschamber.com or at (202) 463-5457.

Sincerely,

A handwritten signature in black ink, appearing to read "William L. Kovacs". The signature is fluid and cursive, with a large initial "W" and "L".

William L. Kovacs